

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PASCHAL A. CHRISTMAN JR.,

Plaintiff,

V.

MIKE BOUDREAUX, *et al.*,

Defendants.

Case No. 1:23-cv-00605-JLT-EPG (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS THIS ACTION WITHOUT
PREJUDICE FOR FAILURE TO
PROSECUTE AND FAILURE TO COMPLY
WITH A COURT ORDER

OBJECTIONS, IF ANY, DUE IN 14 DAYS

Plaintiff Paschal A. Christman Jr. proceeds *pro se* in this civil action pursuant to 42 U.S.C. § 1983. For reasons stated below, the Court recommends that this case be dismissed without prejudice for failure to prosecute and failure to comply with Court's orders.

I. BACKGROUND

Plaintiff filed the complaint commencing this action on April 19, 2023. (ECF No. 1). Plaintiff complains of various incidents and conditions in various detention facilities in 2022 and 2023. (*Id.*)

The Court reviewed Plaintiff's complaint and issued a screening order on June 21, 2023, finding that Plaintiff failed to comply with Federal Rule of Civil Procedure 8(a) because Plaintiff has not provided a short and plain statement of any claim showing that he is entitled to relief, and Rules 18 and 20, because Plaintiff brings unrelated claims against different defendants. (ECF No. 113, at 1-2).

1 9, at 1–2). The Court gave Plaintiff the option, within thirty days, to amend his complaint or stand
2 on the complaint and have it reviewed by the District Judge. (ECF No. 9, at 2, 10).

3 Plaintiff asked for (ECF Nos. 12, 14, and 16) and received multiple extensions of time to
4 file an amended complaint (ECF Nos. 13, 15, and 17). The last order granting Plaintiff's motion
5 cautioned the Plaintiff “that given the two extensions already given, this will be the last extension
6 of this deadline and failure to file an amended complaint by this date may result in dismissal of
7 the case. . . . Plaintiff is granted a final extension to October 25, 2023 to file a first amended
8 complaint.” (ECF No. 17).

9 In more than a month since that deadline passed, Plaintiff has not filed an amended
10 complaint or otherwise responded to the Court's order.

11 **II. LEGAL STANDARDS**

12 Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action for failure to
13 comply with court orders and to prosecute. In determining whether to dismiss an action under
14 Rule 41(b) for failure to prosecute or failure to comply with a Court order, “the Court must weigh
15 the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the
16 court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the
17 availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on
18 their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*,
19 963 F.2d 1258, 1260–61 (9th Cir. 1992)).

20 **III. ANALYSIS**

21 Despite the Court's order for Plaintiff to either file an amended complaint or notify the
22 Court in writing that he wants to stand on his complaint, Plaintiff failed to file either. The Court
23 issued multiple orders warning Plaintiff that failure to comply with the Court's orders and failure
24 to file an amended complaint may result in the dismissal of this action. (ECF No. 9 at 10; ECF
25 No. 13; ECF No. 17). Despite these warnings, Plaintiff has failed to prosecute this action and to
26 follow Court's orders.

27 In applying the *Pagtalunan* factors to this case, the first factor weighs in favor of
28 dismissal, because “[t]he public's interest in expeditious resolution of litigation always favors

1 dismissal.” *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)
2 (internal quotation marks omitted).

3 As to the second factor, the Court’s need to manage its docket, “[t]he trial judge is in the
4 best position to determine whether the delay in a particular case interferes with docket
5 management and the public interest. . . . It is incumbent upon the Court to manage its docket
6 without being subject to routine noncompliance of litigants” *Pagtalunan*, 291 F.3d at 639.
7 Despite being given ample opportunity to do so, Plaintiff has failed to file a response to the
8 Court’s screening order issued over five months ago. This failure to respond is inexcusably
9 delaying the case and interfering with docket management. Therefore, the second factor weighs in
10 favor of dismissal.

11 Turning to the third *Pagtalunan* factor, risk of prejudice to Defendants, “pendency of a
12 lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal.” *Id.* at 642 (citing
13 *Yourish*, 191 F.3d at 991). However, “delay inherently increases the risk that witnesses’ memories
14 will fade and evidence will become stale,” *id.* at 643, and it is Plaintiff’s failure to prosecute this
15 case that is causing delay. Therefore, the third factor weighs in favor of dismissal.

16 As for the availability of lesser sanctions, the fourth *Pagtalunan* factor, at this stage in the
17 proceedings there is little available to the Court which would constitute a satisfactory lesser
18 sanction while protecting the Court from further unnecessary expenditure of its scarce resources.
19 Considering Plaintiff’s incarceration, monetary sanctions are of little use. And, given the stage of
20 these proceedings, the preclusion of evidence or witnesses is not available. Therefore, the fourth
21 factor also weighs in favor of dismissal.

22 Finally, public policy favors disposition on the merits. *Pagtalunan*, 291 F.3d at 643.
23 Because the dismissal is without prejudice, and thus, does not operate as an adjudication on the
24 merits, this factor weighs against dismissal.

25 **IV. CONCLUSION AND RECOMMENDATIONS**

26 After weighing the *Pagtalunan* factors, the Court finds that dismissal without prejudice is
27 appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

- 28 1. This action be dismissed without prejudice under Federal Rule of Civil Procedure
29 41(b) for failure to prosecute and failure to follow Court’s orders;

1 2. The Clerk of Court be directed to close this case.

2 These findings and recommendations will be submitted to the United States district judge
3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
4 (14) days after being served with these findings and recommendations, Plaintiff may file written
5 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
6 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
7 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
8 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

9 IT IS SO ORDERED.

10 Dated: November 27, 2023

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12 /s/ *Eric P. Groj*
13 UNITED STATES MAGISTRATE JUDGE

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